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# STATE OF HAWAII REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS

TO: Chief Procurement Officer

STATE PROCUREMENT OFFICE  
STATE OF HAWAIIFROM: Department of Human Services/Office of Youth Services  
(Department/Division/Agency)

Pursuant to § 103D-102(b)(4), HRS, and Chapter 3-120, HAR, the Department requests a procurement exemption to purchase the following:

## Description of goods, services, or construction:

An assessment and summary report to the Office of Youth Services on the conditions of confinement at the Hawaii Youth Correctional Facility using national standards for state detention facilities. This assessment will include the following:

- Program Assessment
- Social Climate Assessment
- Organizational Climate Assessment
- Educational Program Assessment
- Evaluation of Behavior Management and Physical Restraint Strategies
- Rehabilitative or Treatment Approaches

## Name of Vendor:

**National Juvenile Detention Association**

## Address:

**Eastern Kentucky University**  
**301 Perkins Building**  
**521 Lancaster Avenue**  
**Richmond, Kentucky 40475-3102**

| Cost: | est. \$33,000 |

Term of Contract:	From: Upon CPO Approval	To: 60 days from completion of contract
		Anticipated report date: August 30, 2004
Prior Exemption Ref. No. (if applicable)		

## Explanation describing how procurement by competitive means is either not practicable or not advantageous to the State:

In August 2003, the American Civil Liberties Union (ACLU) issued a report on their findings of the conditions at the Hawaii Youth Correctional Facility (HYCF). Governor Lingle released the report and given the serious nature of the allegations, called for the re-assignment of management at the HYCF. Failure to address issues cited in the ACLU report may result in costly litigation and trigger a federal investigation of the HYCF. This assessment will allow the HYCF to determine those deficiencies remaining to be addressed and will establish a current baseline for improvement. While the ACLU report issues are being addressed by the Office of Youth Services (OYS), the HYCF and the Attorney General's Office, there is a pressing need for a broad and objective assessment of operational practices at the HYCF in comparison to national standards.

The National Juvenile Detention Association (NJDA), Center for Research and Professional Development is the leading national agency providing comprehensive Conditions of Confinement Assessments to states. Their standards are based on the American Corrections Association, Office of Juvenile Justice & Delinquency Prevention (OJJDP), Performance-Based Standards for Juvenile Corrections Facilities, case law and professional practices. OJJDP is the federal agency that provides significant funding to the OYS to improve the juvenile justice system. NJDA is the only agency which comprehensively works with state juvenile detention facilities and was further recommended by the OJJDP for their expertise in this field.

In October 2003, the Judiciary of the State of Hawaii contracted with the National Juvenile Detention Association (NJDA) to conduct a Conditions of Confinement Assessment of Hale Ho'omalulu (Detention Hall) as a response when the ACLU demanded investigation of the facility under their jurisdiction. An assessment of HYCF by the NJDA would allow the state to compare the needs of both the HYCF and Hale Ho'omalulu for jurisdictional planning purposes. There is an advantage to the state in building on the knowledge base that already exists from the prior study NJDA provided to the Judiciary.

A federal investigation conducted by the Department of Justice under the Civil Rights of Institutionalized Persons Act (CRIPA) can occur at any time. Based on the experiences of other state juvenile corrections facilities who have had grossly negative ACLU reports, it is anticipated that the Governor may receive notification of a federal investigation. A proactive measure to mitigate damages and/or to avoid a possible consent decree is to establish the HYCF's baseline so that improvement of conditions can be measured by the same standards as the Department of Justice. In the event this occurs, the conditions of confinement assessment can be used to demonstrate of the state's good faith effort to improve conditions at the HYCF based on the professional review of national experts in the field. The need for the Conditions of Confinement Assessment has been discussed with the staff Department of the Attorney General who concurs in the need for the assessment.

We believe that NJDA is the only agency that can offer this advantage to the state. We are seeking this exemption because we believe the procurement by competitive means is not practicable or not advantageous to the state for the following reasons:

- 1) If we do not use the same assessment tool already used by the Judiciary, it will not allow for the consistent comparison of the needs of the HYCF and Hale Ho'omalua for jurisdictional planning purposes to improve the state's juvenile justice system. No other agency can offer that unique advantage that NJDA can add to our planning and improvement process.
- 2) If the OYS uses a lesser qualified group for assessment and, if a federal suit occurs, the state may be required to do a second review of the conditions of confinement using nationally recognized experts such as NJDA.
- 3) Because Hawaii has only one juvenile correctional facility for youth committed by the Family Court there is probably not the expertise in Hawaii to competitively compete locally to do a thorough assessment based on the board range of standards, case law and professional expertise. We believe that NJDA is the only agency that can offer this advantage to the state.

Details of the process or procedure to be followed in selecting the vendor to ensure maximum fair and open competition as practicable:

We are seeking this procurement exception because the NJDA can provide the most appropriate assessment in a timely manner. Time is of the essence in establishing the state's baseline for improvement. Should a federal investigation ensue, the ACLU report based on allegations of past practices at HYCF for the past 2-3 years will be used. The state will lose the advantage of proactively determining what improvements have been made and where we are at the present time. Clearly, the cost of the assessment and the advantage it can give the state outweighs a costly settlement or consent decree.

A description of the agency's internal controls and approval requirements for the exempted procurement:

The OYS/HYCF will use its Standard Form Agreement for Services and adhere to all DAGS accounting procedures for processing payments under the contract. The Executive Director of Office of Youth Services will sign on behalf of the Hawaii Youth Correctional Facility.

A list of agency personnel, by position title, who will be involved in the approval process and administration of the contract:

Sharon L. Agnew, Executive Director, Office of Youth Services  
 Kaleve Tufono-Iosefa, Youth Facility Administrator, Hawaii Youth Correctional Facility  
 Richard T. Bissen, Jr., First Deputy Attorney General, Department of the Attorney General  
 Blair Goto, Deputy Attorney General, Department of the Attorney General  
 Winifred Doi, Administrative & Technical Officer, Office of Youth Services

Direct questions to:

Sharon L. Agnew, Executive Director, Office of Youth Services  
 Winifred Doi, Administrative & Technical Services Officer

Phone Number: 587-5710  
 Phone Number: 587-5714

This exemption should be considered for list of exemptions attached to Chapter 3-120, HAR: Yes ☐ No ☒

**I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS, TO THE BEST OF MY KNOWLEDGE, TRUE AND CORRECT.**

  
 Department Head or Designee

5/20/04  
 Date

Executive Director, Office of Youth Services  
 Title (If other than Department Head)

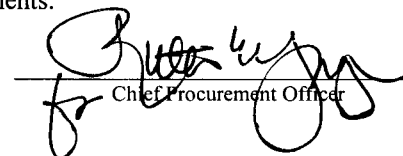
Chief Procurement Officer's Comments:

Please ensure adherence to applicable administrative requirements.

☒ APPROVED

☐ DISAPPROVED

cc: Administrator,  
 State Procurement Office

  
 Chief Procurement Officer

6/4/04  
 Date

# STATE OF HAWAII

## NOTICE OF EXEMPTION FROM CHAPTER 103D, HRS

The Chief Procurement Officer is in the process of reviewing the request from the Department of Human Services, Office of Youth Services for exemption from Chapter 103D, HRS, for the following goods, services, or construction:

2004 Conditions of Confinement Study for the Hawaii Youth Correctional Facility (HYCF)

**Vendor:** **National Juvenile Detention Association**

**Address:** **Eastern Kentucky University  
301 Perkins Building  
521 Lancaster Avenue  
Richmond, Kentucky 40475-3102**

**Term of Contract:**

From:  
06/16/04

To:  
08/30/04

**Cost:**  
est. \$33,000.00

**Direct any inquiries to:**

Department: Office of Youth Services

Contact Name/Title: Sharon L. Agnew, Executive Director

Address: 820 Mililani Street, Suite 817  
Honolulu, HI 96813

Phone Number:  
587-5710

Fax Number:  
587-5734

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Date Posted: MAY 21, 2004

A copy of this notice of exemption from Chapter 103D, HRS, shall be posted by the Chief Procurement Officer and the purchasing agency in an area accessible to the public, at least seven (7) calendar days prior to any approval action.

Submit written objections to this notice to issue an exemption from Chapter 103D, HRS, within seven (7) calendar days from the date posted to:

Chief Procurement Officer

Office/Agency \_\_\_\_\_

Address \_\_\_\_\_

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